

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

THE GEO GROUP, INC.,

Plaintiff and Counterdefendant,

v.

JAY INSLEE, in his official capacity as the
Governor of the State of Washington; BOB
FERGUSON, in his official capacity as the
Attorney General of the State of
Washington,

Defendants and Counterplaintiffs.

NO. 3:21-cv-05313-BHS

GOVERNOR INSLEE AND
ATTORNEY GENERAL
FERGUSON'S
COUNTERCLAIMS FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND
CIVIL PENALTIES

I. INTRODUCTION

1. Washington Governor Jay Inslee and Attorney General Bob Ferguson (Counterplaintiffs) bring these counterclaims to remedy the open, willful, and flagrant violations of state law by Counterdefendant The GEO Group, Inc. (GEO). Engrossed House Bill 1090 (EHB 1090) is a state law validly enacted by the Washington Legislature that phases out private, for-profit detention as a lawful business activity in the state. As GEO repeatedly has recognized—including in papers filed with this Court—EHB 1090 required GEO to close its private, for-profit detention center, the Northwest ICE Processing Center, on September 27, 2021. GEO did not do so, and now openly flouts state law by operating a business

1 that federal and state policymakers and regulators have determined to be unsafe, unsanitary, and
 2 abusive. GEO's business practices at the Northwest ICE Processing Center are unlawful, unfair
 3 or deceptive, and target or impact individuals based on their national origin, immigration status,
 4 or citizenship status. This Court should uphold EHB 1090, order GEO to comply with the statute,
 5 and impose civil penalties against GEO in the amount of \$12,500 per violation for unlawfully
 6 operating the Northwest ICE Processing Center.

7 **II. JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over Counterplaintiffs' claims arising under the
 9 Constitution and laws of the United States pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. The
 10 Court has supplemental jurisdiction over Counterplaintiffs' claim arising under the Washington
 11 Consumer Protection Act pursuant to 28 U.S.C. § 1367.

12 3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a
 13 substantial part of the events or omissions giving rise to this claim occurred in this district.

14 **III. PARTIES**

15 4. Counterplaintiff Governor Inslee is the chief executive officer of the State of
 16 Washington. The Governor is responsible for overseeing the operations of the State and ensuring
 17 that its laws are faithfully executed. Wash. Const. art. III, §§ 2, 5. Governor Inslee brings these
 18 counterclaims in his official capacity on behalf of the State of Washington.

19 5. Counterplaintiff Attorney General Ferguson is the chief legal advisor to the State
 20 of Washington. Attorney General Ferguson's powers and duties include acting in federal court
 21 on matters of public concern. Wash. Rev. Code § 43.10.030(1). He is also assigned specific
 22 enforcement authority under Washington's Consumer Protection Act. Wash. Rev. Code
 23 § 19.86.080(1). Attorney General Ferguson brings these counterclaims in his official capacity
 24 on behalf of the State of Washington.

25 6. Counterplaintiffs' interests in preventing and remedying injuries to the public's
 26 health, safety, and well-being extend to all people in Washington. Counterplaintiffs' interests in

1 preventing unlawful, unfair, or deceptive business practices likewise extend throughout the state.

2 7. Counterdefendant The GEO Group, Inc. (GEO) is a Florida, for-profit
3 corporation with its principal place of business in Boca Raton, Florida.

4 IV. ALLEGATIONS

5 8. Since 2005, GEO has owned and operated the Northwest Detention Center,
6 located at 1623 East J Street, Tacoma, Washington 98421. The Northwest Detention Center is a
7 private immigration detention center that has the capacity to house approximately 1,575
8 individuals.

9 9. In 2019, GEO renamed its Tacoma facility the Northwest ICE Processing Center
10 (NWIPC). Despite the name change, the facility always has been, and is currently, privately
11 owned and operated by GEO.

12 10. Over the last several years, due to well-documented health and safety risks inside
13 private detention facilities, including the NWIPC, the Washington Legislature has taken a
14 number of steps to study and limit the use of private prisons and detention centers in Washington
15 State. *See, e.g.*, Wash. Rev. Code §§ 36.70A.200(1)(b), 72.68.010, 72.68.110(1); Engrossed
16 Substitute House Bill 2576, 2020 Wash. Sess. Laws, ch. 284, § 1.

17 11. In April 2021, as part of its years-long study and work on this issue, the
18 Washington State Legislature passed Engrossed House Bill 1090 (EHB 1090), which phases out
19 most private, for-profit detention as a lawful business activity within the state. 2021 Wash. Sess.
20 Laws, ch. 30 § 1(3).

21 12. EHB 1090 contains the Legislature's findings regarding the threat to public health
22 and welfare posed by private prisons and detention facilities. EHB 1090 §§ 1(1)-(5). These
23 include that "profit motives lead private prisons and detention facilities to cut operational costs,
24 including the provision of food, health care, and rehabilitative services, because their primary
25 fiduciary duty is to maximize shareholder profits." The Legislature also found that "people
26 confined in for-profit prisons and detention facilities have experienced abuses and have been

1 confined in dangerous and unsanitary conditions.” The Legislature further found that “[s]afety
 2 risks and abuses in private prisons at the local, state, and federal level have been consistently
 3 documented.” The Legislature cited evidence that the profit motive results in a lack of resources
 4 and staff training, and that the private nature of such facilities frustrates the public’s need for
 5 accountability and transparency.

6 13. EHB 1090 defines “Private detention facility” as “a detention facility that is
 7 operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or
 8 agreement with a federal, state, or local governmental entity.” EHB 1090 § 2(2).

9 14. EHB 1090 provides that, with certain exceptions, “no person, business, or state
 10 or local governmental entity shall operate a private detention facility within the state or utilize a
 11 contract with a private detention facility within the state.” EHB 1090 § 3(1).

12 15. One of EHB 1090’s exceptions is for “[a] private detention facility that is
 13 operating pursuant to a valid contract with a governmental entity that was in effect prior to
 14 January 1, 2021[.]” EHB 1090 § 3(2). For facilities with existing contracts as of that date,
 15 EHB 1090 allows them to phase out their operations, allowing that they “may remain in
 16 operation for the duration of that contract, not to include any extensions or modifications made
 17 to, or authorized by, that contract.” *Id.*

18 16. EHB 1090 contains a finding that the act “is necessary for the immediate
 19 preservation of the public peace, health, or safety, or support of the state government and its
 20 existing public institutions.” EHB 1090 § 5. Accordingly, the Legislature directed that it take
 21 effect immediately upon signature by Governor Inslee. *Id.* Governor Inslee signed the bill into
 22 law on April 14, 2021, and it became effective the same day.

23 17. At the NWIPC, GEO operates a “private detention facility” as defined by
 24 EHB 1090.

25 18. As of January 1, 2021, GEO’s contract with U.S. Immigration and Customs
 26 Enforcement to provide civil detention services at the NWIPC ran through September 27, 2021.

Under the plain terms of EHB 1090, GEO may not lawfully operate the NWIPC beyond September 27, 2021.

19. GEO was well aware of EHB 1090 while it was pending in the Legislature, sending several representatives to testify against the bill while it was being considered.

20. GEO was also well aware of the effective date of EHB 1090. Fifteen days after Governor Inslee signed EHB 1090, GEO sued Counterclaimants to challenge application of EHB 1090 to the NWIPC. GEO represented repeatedly and emphatically to the Court, Counterclaimants, and the public that EHB 1090 “will force GEO to close NWIPC by September 27, 2021.” ECF No. 8 at 12; *accord* ECF No. 1 at ¶¶ 58, 60, 62; ECF No. 8 at 11, 12, 16, 17, 28.

21. Despite these unambiguous representations, GEO did not close the NWIPC on September 27, 2021. GEO was dishonest with the Court, the parties, and the public when it repeatedly committed that, absent preliminary injunctive relief, it would close the NWIPC by that date.

22. GEO continues to hold hundreds of individuals per day in a private detention facility as proscribed by EHB 1090.

23. GEO’s practices target or impact specific individuals or communities based on demographic characteristics, including but not limited to national origin, citizenship status, and immigration status.

V. CAUSES OF ACTION

FIRST COUNTERCLAIM—VIOLATION OF EHB 1090

24. Counterclaimants reallege and incorporate by reference the allegations set forth in the preceding paragraphs.

25. EHB 1090 regulates only state government, local governments, and private detention providers. The law directs or prohibits no action by the federal government.

26. Private companies like GEO are not exempt from state regulation by virtue of

1 their status as federal contractors.

2 27. EHB 1090 is a lawful and valid exercise of the Washington Legislature's
3 legitimate police power to protect the health and welfare of individuals within state borders.
4 EHB 1090 presents no conflict with Supremacy Clause of the United States Constitution or any
5 other federal law or regulation that GEO has identified. EHB 1090 validly applies to GEO, a
6 private business, in its operation of the NWIPC, a private detention facility.

7 28. GEO is squarely covered by EHB 1090, and GEO's continued operation of the
8 NWIPC after September 27, 2021, violates EHB 1090.

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10 **SECOND COUNTERCLAIM—VIOLATION OF WASHINGTON CONSUMER
PROTECTION ACT**

11 29. Counterclaimants reallege and incorporate by reference the allegations set forth
12 in the preceding paragraphs.

13 30. The Washington Consumer Protection Act prohibits unfair or deceptive acts or
14 practices in the conduct of any trade or commerce. Wash. Rev. Code § 19.86.020.

15 31. GEO is engaged in "trade" or "commerce" in Washington State as defined by the
16 Washington Consumer Protection Act. Wash. Rev. Code § 19.86.010(2).

17 32. Under the Washington Consumer Protection Act, an unfair practice is one that,
18 inter alia, offends public policy as established by statutes, the common law, or otherwise; is
19 immoral, unethical, and/or oppressive; or causes substantial injury to consumers, competitors,
20 or other businesses. Under the same statute, deception exists, inter alia, where a business makes
21 a representation, omission, or practice that is likely to mislead a reasonable member of the public.

22 33. GEO's operation of the NWIPC after September 27, 2021, detaining hundreds of
23 individuals per day, in violation of public policy and state statute, under unsafe, unsanitary, and
24 abusive conditions, and contrary to repeated representations it made to the Court, the parties, and
25 the public is an unfair or deceptive practice in violation of the Washington Consumer Protection
26 Act.

34. GEO's acts and practices are not reasonable in relation to the development and preservation of any lawful business and are inconsistent with the public interest.

VI. PRAYER FOR RELIEF

Wherefore, Counterclaimants respectfully requests that this Court:

35. Declare that GEO's operation of the NWIPC violates EHB 1090;

36. Declare that EHB 1090 presents no conflict with any federal constitutional, statutory, or regulatory provision identified by GEO;

37. Declare that GEO's acts described above are unfair or deceptive acts or practices in trade or commerce, affecting the public interest, and in violation of the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.020;

38. Enjoin GEO from operating the NWIPC as a private detention facility in violation of EHB 1090;

39. Enjoin GEO from engaging in any acts that violate the Washington Consumer Protection Act, including but not limited to the unfair or deceptive acts or practices alleged herein;

40. Award a civil penalty of \$7,500 per violation, pursuant to the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.140;

41. Award an additional, enhanced civil penalty of \$5,000 per violation, because GEO's practices target or impact specific individuals or communities based on demographic characteristics, including but not limited to national origin, citizenship status, and immigration status, pursuant to the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.140;

42. Award Counterclaimants' reasonable costs and attorneys' fees incurred in this action, pursuant to Wash. Rev. Code § 19.86.080(1); and

43. Award any other relief the Court deems just and equitable.

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1 DATED this 28th day of September, 2021.

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3 Respectfully Submitted,

4 ROBERT W. FERGUSON
5 Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED this 28th day of September, 2021.

s/ Anna Alfonso
ANNA ALFONSO
Legal Assistant